

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Sections)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992:)
Rate Regulation)

MM Docket No. 92-266

TO: The Commission

COMMENTS OF THE TIMES MIRROR COMPANY

THE TIMES MIRROR COMPANY

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The Times Mirror Company ("Times Mirror") respectfully submits these comments in response to the Fifth Notice of Proposed Rulemaking in this proceeding, FCC 94-38 (rel. March 30, 1994) ("Fifth NPRM"). Times Mirror urges the Commission to examine carefully the effect of certain aspects of its going-forward methodology on the "goals of encouraging infrastructure development and growth of programming."^{1/}

Argument

Two of the principal objectives of the 1992 Cable Act were to "promote the availability to the public of a diversity of views and information through cable television," and to "ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered

^{1/} Fifth NPRM at ¶ 256.

over their cable systems."^{2/} These goals are also an integral part of the Administration's agenda to promote the development of the advanced information infrastructure, which contemplates a multiplicity of choices in communications products and services.^{3/}

Times Mirror, a media and information company, is actively engaged in plans to provide consumers with some of those choices. The company currently publishes the Los Angeles Times, Newsday, and the Baltimore Sun, among other newspapers, books, journals, and college texts. Times Mirror's magazine division publishes Field & Stream, Popular Science, Outdoor Life, Golf Magazine, Home Mechanix, Ski Magazine, Skiing Magazine, Salt Water Sportsman, and Yachting, and has a monthly readership of 24 million or 14% of all U.S. adults. Times Mirror has recently established The Times Mirror Programming Company in order to make a major investment in the development and introduction of

^{2/} The Cable Television Competition and Consumer Protection Act of 1992, §§ 2(b)(1), 2(b)(3).

^{3/} See, e.g., Remarks of Vice President Gore at the National Press Club at 6 (Dec. 21, 1993) (advanced information infrastructure will "involve a variety of affordable and innovative appliances and products giving individuals and public institutions the best possible opportunity to be both information customers and providers"); Statement of Chairman Reed E. Hundt Before the House Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce on H.R. 3636 and H.R. 3626 at 16 (Jan. 27, 1994) (advanced technologies will "deliver the full range of services that customers demand").

innovative cable programming services that are based upon these print media.^{4/}

Times Mirror is now in the process of introducing the first of these services. The Outdoor Life Channel, which has been planned for launch in 1995, is designed to provide service of interest to outdoor enthusiasts and conservationists. It will feature programming dedicated to outdoor sports, environmental issues, "how to" information and demonstrations, and children's outdoor activities, taking advantage of the extensive experience that Times Mirror has acquired through its outdoor-oriented magazines. Times Mirror is also currently planning the development of similar cable networks based on its other print media. These new programming ventures are being designed to combine many of the information and entertainment aspects of traditional video programming with the interactive component of home shopping. They hold the promise of making an important contribution to the array of services ultimately available through the advanced information infrastructure.

Times Mirror fully agrees with the Commission's goal of maintaining reasonable subscriber rates while encouraging new and diverse sources of programming. The balance required to achieve this goal is a delicate one, however, and Times Mirror is

^{4/} While Times Mirror also owns a number of cable systems, the focus of this petition is on its ability as a cable programmer to persuade sufficient nonaffiliated cable systems to carry its new program services so as to warrant their introduction.

concerned that certain aspects of the going-forward rules as currently formulated will severely hamper the development of such new services. Quite apart from legitimate concerns about the adequacy of the mark-up permitted by the new rules^{5/}, these provisions are structured to provide a disincentive for operators to carry the very kind of new niche program services that the Cable Act sought to foster. Any mark-up calculated on a cost plus percentage basis distorts the marketplace incentives in favor of selection of more expensive program services. Thus, at a time when scores of new networks are under consideration, the new rules may have a "chilling effect on new channels," particularly those that provide new services at the lowest cost.^{6/} Times Mirror understands, for example, that at least one operator has already chosen to delete low cost networks to make

^{5/} Times Mirror notes that this markup was selected by the Commission after it had advised that it would not do so in the proceeding, and despite comments suggesting that the same markup adopted in the cost-of-service proceeding would be more appropriate. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Further Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1241 n. 244 (1993) (mark-up issue to be resolved in Cost-of-Service proceeding); see also, e.g., Comments of Viacom International at 9 n.8 (filed Sept. 30, 1993) (mark-up should be that determined to be reasonable in the Cost-of-Service proceeding).

^{6/} Christopher Stern, *Deciphering the FCC's New Cable Rules*, BROADCASTING & CABLE, Apr. 11, 1994, at 51; see also John M. Higgins & Rod Granger, "Small Networks, Big Problem?," MULTICHANNEL NEWS, Apr. 25, 1994, at 54 (7.5% mark-up provides little incentive for operators to add networks "that charge no license fee like The Travel Channel or just a few pennies per subscriber, like Nostalgia Television or Country Music Television").

room on its system for The Spice Channel and other pay-per-view services.

Other cable programmers appear to share these concerns about the nature of the balance struck in the new rules. E!, for example, has concluded that "it will be impossible to launch a new service in today's environment."^{7/} And Black Entertainment Television has noted that the rules will have the effect of limiting the distribution of "minority-targeted services."^{8/} BET maintains that the mark-up on programming costs allowed by the Commission is too small and that it is improperly based on the cost of the programming, thereby creating an incentive for operators to add only the most expensive programming.

To resolve some of these difficulties, the Commission should consider providing instead for a fixed mark-up or, alternatively, allowing for a sliding scale mark-up that increases as program costs decrease. By equalizing the benefit to the operator of distributing low-fee and high-fee program services, the Commission would ensure that operators would make programming decisions based on consumer demand and the quality of the programming service, and not upon maximizing the price charged to subscribers.

^{7/} Stern, supra note 6.

^{8/} Letter from Maurita K. Coley, BET, to William F. Caton, Acting Secretary of the FCC (May 9, 1994) (memorializing ex parte meeting).

The Commission should also consider amending its rules concerning the measurement of program costs. Section 76.922(d)(3)(x) of the Commission's rules, for example, requires operators to offset programming costs by revenues received from programmers. However, the Commission has determined that operators need not offset advertising revenues.^{9/} Since that time, the Cable Services Bureau has concluded that product sales commissions paid by home shopping services should be offset on a channel-by-channel basis.^{10/} As noted above, other programming services may combine programming for which the operator pays carriage fees with the payment of sales commissions to operators for products sold over their systems. In the case of the Outdoor Life Channel, for example, these might include commissions on the sale of fishing rods. There would appear to be no reason to treat such commissions, based purely on legitimate subscriber purchases, differently from advertising revenues or from similar revenues from home shopping networks. According similar treatment to these subscriber purchases avoids substantial disincentives to the development of new niche programming services, which can involve start-up costs of millions of

^{9/} See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further NPRM, 8 FCC Rcd 5631, 5789 n.602 (1993).

^{10/} See Letter from Alexandra M. Wilson, Acting Chief, Cable Services Bureau, to Sue D. Blumenfeld and Philip L. Verveer, attorneys for QVC Network, Inc. (May 9, 1994).

dollars, and to the carriage and promotion of such new services by cable operators.

Conclusion

For the reasons stated above, Times Mirror urges the Commission to carefully consider in this rulemaking the impact of its going-forward methodology on the development and promotion of new and innovative cable program services.

Respectfully submitted,

THE TIMES MIRROR COMPANY

A handwritten signature in dark ink, appearing to read "W. Kenneth Ferree", is written over a horizontal line.

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